

## **REMARKS**

This is a full and timely response to the outstanding non-final Office Action mailed April 7, 2005. Upon entry of the amendments in this response, claims 9 – 14, 16 – 18 and 21 – 39 remain pending. In particular, Applicant has amended claims 9 and 14. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

### **Allowable Subject Matter**

The Office Action indicates that claims 21 – 39 would be allowable if rewritten or amended to overcome the obviousness-type double-patenting rejections set forth in this Office Action. In this regard, Applicant submits a terminal disclaimer pursuant to 37 C.F.R. §1.321(c). Applicant has submitted the terminal disclaimer solely to advance prosecution, without conceding that the double-patenting rejection is properly based. In filing the terminal disclaimer, Applicant relies upon the ruling of the Federal Circuit that the filing of such a terminal disclaimer does not act as an admission, acquiescence, or estoppel on the merits of the obviousness issue. *Quad Environmental Tech v. Union Sanitary Dist.*, 946 F.2d 870, 874-875 (Fed. Cir. 1991). Therefore, Applicant respectfully asserts that claims 21 – 39 are in condition for allowance.

### **Obviousness-Type Double-Patenting Rejection**

The Office Action indicates that claim 14 stands rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 9 of U.S. Patent Number 6,700,853. As set forth above, Applicant has submitted herewith a terminal disclaimer pursuant to 37 C.F.R. §1.321(c). Therefore, Applicant respectfully requests that the rejection be removed.

## **Rejections Under 35 U.S.C. §102**

The Office Action indicates that claims 9 – 13, 14, 16 – 18 and 20 stand rejected under 35 U.S.C. §102(b) as being anticipated by *Gibson*. Applicant respectfully traverses the rejections.

In this regard, Applicant has amended claim 9, which now recites:

9. A data storage device comprising:  
a first wafer having a storage medium, said storage medium having data clusters, each of said data clusters having storage areas associated therewith, each of said storage areas being configurable in one of a plurality of structural states to represent information stored in said storage area;  
a second wafer fixed in position relative to said first wafer, said second wafer having electron beam emitters configured to electrically communicate with said storage medium, said storage medium and said electron beam emitters being configured to move relative to each other such that at least one of said electron beam emitters is capable of providing a beam of electrons to storage areas of a first data cluster for configuring each of said storage areas in one of said structural states; and  
means for preventing said at least one of said electron beam emitters from attempting to write data to one of said data clusters other than said first data cluster *such that said first data cluster is spaced from others of said data clusters*.

(Emphasis Added).

Applicant respectfully asserts that *Gibson* is legally deficient for the purpose of anticipating claim 9. Specifically, Applicant respectfully asserts that *Gibson* does not teach or otherwise disclose at least the features/limitation emphasized above in claim 9. Notably, *Gibson* does not appear to discuss spacing between data clusters. Therefore, Applicant respectfully requests that the rejection of claim 9 be removed, and that this claim be placed in condition for allowance.

Since claims 10 - 13 are dependent claims that incorporate the limitations of claim 9, Applicant respectfully asserts that these claims also are in condition for allowance. Additionally, these claims recite other limitations that can serve as an independent basis for patentability.

With respect to claim 14, that claim has been amended to recite:

14. (Currently Amended) A method for storing data, said method comprising:

providing a data storage device having a first wafer and a second wafer, the first wafer having a storage medium, the storage medium having storage areas associated therewith, each of the storage areas being configurable in one of a plurality of structural states to represent information stored in the storage area, the second wafer being fixed in position relative to the first wafer, the second wafer having electron beam emitters configured to electrically communicate with the storage medium, the storage medium and the electron beam emitters being configured to move relative to each other such that at least one of the electron beam emitters is capable of providing a beam of electrons to a first storage area for configuring the first storage area in one of the structural states and to a second storage area for configuring the second storage area in one of the structural states; and

*preventing the at least one of the electron beam emitters from writing data to a third storage area, the first storage area and the third storage area having a separation area located therebetween, the separation area being larger than a space located between the first storage area and the second storage area.*

(Emphasis Added).

Applicant respectfully asserts that *Gibson* is legally deficient for the purpose of anticipating claim 14. Specifically, Applicant respectfully asserts that *Gibson* does not teach or otherwise disclose at least the features/limitation emphasized above in claim 14. Therefore, Applicant respectfully requests that the rejection of claim 14 be removed, and that this claim be placed in condition for allowance.

Since claims 16 – 18 and 20 are dependent claims that incorporate the limitations of claim 14, Applicant respectfully asserts that these claims also are in condition for allowance. Additionally, these claims recite other limitations that can serve as an independent basis for patentability.

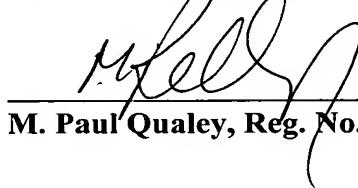
#### Cited Art Made of Record

The cited art made of record has been considered, but is not believed to affect the patentability of the presently pending claims.

## **CONCLUSION**

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

  
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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on 6/16/05.

Stephanie Riley  
Signature